

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MASSACHUSETTS**

In re : Chapter 7
LEMAR KEMP : CASE NO. 07-40608-JBR
DEBTOR :

**ORDER ON CHAPTER 13 TRUSTEE'S OBJECTION TO CONFIRMATION OF
DEBTOR'S AMENDED CHAPTER 13 PLAN**

This matter came before the Court for hearing on the Chapter 13 Trustee's Objection to Confirmation of the Debtor's Amended Chapter 13 Plan [#43] on the grounds that the Debtor is not committing all of his "projected disposable income" to the plan as required by 11 U.S.C. § 1325(b)(1)(B). The proposed amended plan does not provide a dividend to unsecured creditors. Although the Debtor did not file a response to the objection, at the hearing he argued that he has extraordinary expenses listed on his amended schedule J that the Court should consider in calculating the Debtor's projected disposable income and which justify paying no dividend to his unsecured creditors.

FACTS

The Debtor filed a voluntary petition under Chapter 13 of the United States Bankruptcy Code on February 21, 2007. On March 16, 2007 he filed his first "Chapter 13 Statement of Current Monthly Income and Calculation of Commitment Period and Disposable Income," Form 22C. In it he reported annualized current monthly income (line 15 of Form 22C) of approximately \$1,000 more than the applicable median family income (line 16). He was, therefore, considered an above median income debtor. At the same time he filed his schedules, including Schedule J which indicated total monthly

expenses of \$3,699. On May 2, 2007 the Debtor filed an amended Form 22C which reflected that his annualized current monthly income exceeded the applicable family median income by approximately slightly more than \$7,000 and thus he remains an above median income debtor. He also filed an amended schedule J which increased his total monthly expenses to \$4,160.

The amended Chapter 13 plan proposes to pay mortgage arrears totaling \$18,219.25 and a priority claim of \$2,619.02 to the IRS through the plan. The plan provides no dividend for the unsecured creditors whose claims aggregate to slightly more than \$55,000.

DISCUSSION

The Court may not confirm a Chapter 13 plan to which the Chapter 13 Trustee or a holder of an allowed unsecured claim has objected unless can demonstrate one of two circumstances, including the provision at issue in this case, namely that:

(B) the plan provides that all of the debtor's *projected disposable income* to be received in the applicable commitment period beginning on the date that the first payment is due under the plan will be applied to make payments to unsecured creditors under the plan.

11 U.S.C §1325(b)(1)(B)(emphasis added).

Projected monthly disposable income is not defined in the Code but for the purposes of §1325(b), “disposable income’ means current monthly income received by the debtor ... less amounts reasonably necessary to be expended” for the debtor’s expenses and certain but capped charitable contributions. 11 U.S.C. §1325(b)(2). Current monthly

income is, as the Bankruptcy Appellate Panel recognized, a historical calculation that provides “a snapshot of the debtor’s prepetition income.” *In re Kibbe*, 361 B.R. 302, 308 (B.A.P. 1st Cir. 2007). Current monthly income is “the average monthly income from all sources that the debtor receives...derived during the 6-month period ending on (i) the last day of the calendar month immediately preceding the commencement of the case if the debtor files the schedule of current income” The calculation of the Debtor’s current monthly income is not at issue.

For above median income debtors §1325(b)(3) instructs the “amounts reasonably necessary to be expended” must be calculated in accordance with 11 U.S.C. § 707(b)(2)(A) and (B). Section 707(b)(2)(A)(ii)(I) is clear that, with additions not relevant to this case, a

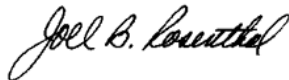
debtor’s monthly expenses *shall* be the debtor’s applicable monthly expense amounts specified under the National standards and Local standards, and the debtor’s actual monthly expenses for the categories specified as Other Necessary Expenses issued by the Internal Revenue service for the area in which the debtor resides, as in effect on the date of the order for relief.... (Emphasis added).

Thus the expenses which an above median income debtor may deduct are standardized. A debtor is allowed certain additional expenses, including up to a 10% commission to be paid to a chapter 13 trustee, documented housing and utility expenses in excess of the standardized expenses, a 5% increase to food and clothing allowance if such increases is shown to be reasonable and necessary, as well as other

deductions not shown to be applicable to this case. Although the phrase “projected disposable income” is not synonymous with “disposable income,” the Court holds that the calculation of the projected disposable income must be based upon the disposable income, which in the case of an above median income debtor, is by express Congressional directive, limited to standardized deductions with certain exceptions noted above. As the Debtor has not attempted to demonstrate that his expenses must reasonably and necessarily exceed the standardized deductions, the calculations in Form 22C control. Because he has not committed all of his projected monthly disposable income to the plan, it cannot be confirmed.

CONCLUSION

For the foregoing reasons, the Chapter 13 trustee's Objection to Confirmation is SUSTAINED. The Debtor may file an amended plan within 30 days of the date of this Order.



Dated: August 9, 2007

Joel B. Rosenthal
United States Bankruptcy Judge